

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 378 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 -No.

JIVABHAI KHODABHAI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR.A.J.Raval forMR JC GOHIL for Petitioner

MR.KC.SHAH,ADDL.PUBLIC PROSECUTOR for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/01/97

ORAL JUDGEMENT

The respondent No.2 wife preferred Misc.Cri.Application No.75 of 1987 under section 125 of the Criminal Procedure Code before the learned Metropolitan Magistrate, Ahmedabad. She claimed that she

had married the present petitioner 17 years ago and she had born 4 daughters out of the said wed-lock. She was, however, time and again beaten by the petitioner and was driven out of the house. She claimed that the petitioner was serving in the Government and was earning a monthly salary of Rs.3400/-. He having no other obligation she was entitled to maintenance of Rs.500/- per month. The learned Magistrate under his judgment and order dated 19-2-92 allowed the application and awarded monthly maintenance of Rs.500/- to the respondent No.2.

Feeling aggrieved the petitioner preferred Criminal Revision Application No.350 of 1992 before the learned Sessions Judge, Ahmedabad which was summarily rejected on 3rd April 1993. The petitioner, therefore, preferred this petition under Article 227 of the Constitution.

This court under order dated 13th August 1993 admitted the petition for final hearing and by way of interim relief, altered the order of maintenance made by the learned Metropolitan Magistrate and the amount of maintenance was reduced to Rs.350/- per month and directed the petitioner to deposit the amount of arrears of maintenance calculated as aforesaid from the date of the order and to regularly pay the said amount of maintenance to respondent No.2.

The respondent No.2 had alleged that the petitioner used to beat her and had driven her out several times. The learned Magistrate considering the evidence produced before him came to the conclusion that the petitioner used to beat and ill-treat and torture the respondent No.2. On several occasions the petitioner had driven her out of the house and that he had made no effort to call her back. It was also found that the petitioner was serving in the Family Planning Division of L.G.Hospital and was earning a monthly salary of Rs.3400/- or more. The learned Magistrate, therefore, awarded a monthly maintenance of Rs.500/- to the respondent No.2 from the date of her application i.e. from 18th June, 1987. The learned Sessions Judge, hearing the revision application preferred by the petitioner summarily rejected the same.

I have perused the judgment and order passed by the learned Magistrate. The learned Magistrate has thoroughly discussed the evidence produced before him and having appreciated the evidence has recorded a finding in favour of the respondent No.2. I find no infirmity in the said judgment which should call for exercise of my

power under Article 227 of the Constitution. Further, the monthly maintenance of Rs.500/- awarded to the respondent No.2 from the date of her application cannot be said to be excessive. It is undisputed that the petitioner was in Public Service and was earning a monthly salary of Rs.3400/-. Two out of the four daughters of the petitioner and the respondent No.2 were major and were married in the year 1992. Considering these facts I see no reason to alter the amount of the maintenance awarded to the respondent No.2.

In view of the above discussion, the judgment and order made by the learned Metropolitan Magistrate in Criminal Misc.Application No.75 of 1987 passed on 19-2-92 is confirmed.

Petitioner is directed to pay a sum of Rs.500/- towards monthly maintenance to respondent No.2 every month regularly commencing from 1st February, 1997. Petitioner shall also pay all the arrears of maintenance calculated in accordance with the order of the learned Metropolitan Magistrate, within four months from today.

Petition is dismissed. Rule is discharged.

Registry is directed to send the writ forthwith.
